



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 28, 2024

FROM: DIRECTOR GINO BETTS, JR. 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2024OPA-0070

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.100 – De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force (Effective April 24, 2023)	Not Sustained - Lawful and Proper
# 2	8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)	Not Sustained - Training Referral

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

Named Employee #1 (NE#1)—a sergeant—responded to a burglary call involving Community Member #1 (CM#1), who was detained and released. CM#1 refused to leave and grabbed NE#1's wrist, prompting NE#1 to take CM#1 to the ground. It was alleged that NE#1 failed to de-escalate and used unauthorized force.

ADMINISTRATIVE NOTE:

During its intake investigation, OPA identified Witness Officer #1 (WO#1) as not carrying his less-lethal weapon option. OPA sent WO#1's potential SPD Interim Policy 8.300-POL-1(2) (Uniformed Officers Are Required to Carry at Least One Less Lethal Weapon) (effective December 1, 2023) violation to his chain of command for Supervisor Action.¹

On July 25, 2024, the Office of Inspector General certified OPA's investigation as thorough and timely but not objective. OIG characterized a question during the named employee's OPA interview as leading:

- Around the 20:00 mark in the interview, the investigator begins suggesting adjectives to describe the subject's behavior. Specifically, the investigator describes the subject's behavior as "argumentative."

OIG opined, "This makes subsequent questions asked about the subject's behavior (such as asking the Named Employee what other words he would use to describe the subject's behavior) leading questions." However, OPA respectfully disagrees that a single leading question somehow poisoned the well of subsequent questions. Asking an

¹ Supervisor Action generally involves a minor policy violation or performance issue that is best addressed through training, communication, or coaching by the employee's supervisor. See OPA Internal Operations and Training Manual section 5.4(B)(ii).



interviewee “what other words *he would use* to describe the subject’s behavior” is a textbook open-ended question (emphasis added). Moreover, a single leading question should not render the entire investigation non-objective.

SUMMARY OF INVESTIGATION:

A. OPA Complaint

On February 4, 2024, OPA responded to a Force Investigation Team (FIT) callout involving SPD’s response to a burglary call. OPA learned that officers arrested CM#1 and then released him. However, CM#1—who was intoxicated—refused to leave and confronted the officers. CM#1 grabbed NE#1. NE#1 took down CM#1, causing CM#1 to strike his head against the ground. CM#1 was non-responsive for about a minute. FIT responded due to CM#1’s unconsciousness.

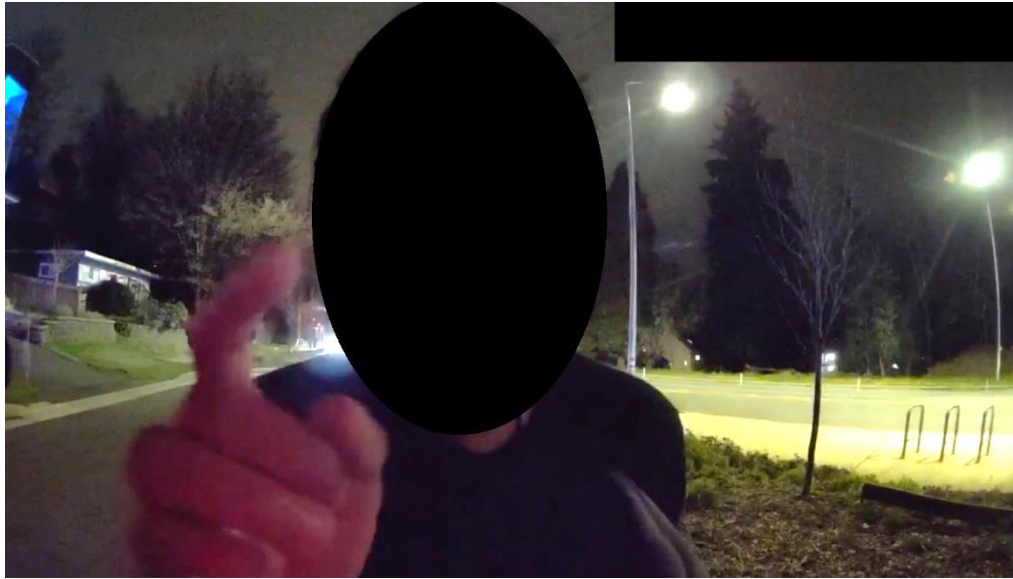
OPA investigated the complaint, reviewing body-worn video (BWV), police reports, and FIT interview statements. OPA also interviewed NE#1. CM#1, through his attorney, declined interview requests from SPD.

B. Body-Worn Video (BWV)

BWV captured the following:

NE#1 and Witness Officer #2 (WO#2) approached the front of a house and found an intoxicated CM#1 on the ground. WO#2 handcuffed CM#1 and escorted him to the front of a patrol car. CM#1, slurring his words, said he did nothing wrong and had nothing to discuss. NE#1 identified himself and told CM#1 he was detained while officers investigated a possible burglary. CM#1 was unsteady and said he was about to urinate. NE#1 *Mirandized* CM#1, but WO#1 and WO#2 later uncuffed CM#1 after residents declined to press charges against CM#1.

CM#1 accused the officers of being criminals and threatened to sue them. NE#1 directed CM#1 to collect his items, but CM#1 unsteadily advanced towards NE#1. NE#1 extended his arm and told CM#1, “Don’t. Back up off me. Get your stuff.” CM#1 asked for NE#1’s name, and NE#1 identified himself. Standing unsteadily close to NE#1, CM#1 asked for NE#1’s card. NE#1 said, “Okay. Don’t touch me.” NE#1 told CM#1 he was free to leave. However, CM#1 approached NE#1, pointed at NE#1, and, presumably looking for NE#1’s name on his vest, said, “I can’t see”:



NE#1 pushed CM#1 and said, "Back up off me. Do you hear me?" CM#1 reapproached NE#1, pointed at NE#1, and said, "I can't see." NE#1 said, "I don't need you this close," and pushed CM#1 again. NE#1 reidentified himself when CM#1 requested his name again. WO#2 handed CM#1 a card, and NE#1 told CM#1 he was free to leave. The officers began walking away, but CM#1 followed and placed his body against the side of WO#2's patrol car. WO#2 removed CM#1 and asked, "What are you doing? Leave!" CM#1 said, "No. Fuck you." CM#1 looked at NE#1 and said, "You fucked with me for no reason. I did nothing wrong." CM#1 placed his arms on the hood of WO#2's patrol car, preventing WO#2 from leaving. CM#1 approached NE#1, pointed his finger at NE#1, and asked, "Who are you?" NE#1 raised his left hand, blocking CM#1's hand:



NE#1 told CM#1 he already identified himself. CM#1 asked to be arrested and then briefly exposed his buttocks. WO#2 escorted CM#1 away while CM#1 shouted, "Go ahead! Fuck me up!" WO#2 drove off.



CM#1 got in front of NE#1 with his hands raised as NE#1 walked towards his patrol car. NE#1 said, "Stay away from me," and pushed CM#1. NE#1 pushed CM#1 twice as CM#1 approached NE#1 closely. CM#1 followed NE#1, who told CM#1 to leave. CM#1 asked, "So, you want to push me? Don't push me." CM#1 grabbed NE#1's arm, and NE#1 asked, "Did you just grab me?" NE#1 pushed CM#1 again. CM#1 said, "Oh yeah, I did. Send me to jail." NE#1 said, "You're the one that's escalating this incident." NE#1 extended his arm, creating distance between CM#1 and himself:



CM#1 asked, "What crime did I commit?" NE#1 said, "None. You're free to go." CM#1 tried to brush NE#1's hand away three times as CM#1 said, "You're putting your hands on me." CM#1 repeatedly asked, "What crime did I commit?" CM#1 (red arrow) then grabbed NE#1's wrist:





NE#1 grabbed CM#1's wrist and elbow (blue arrows) and pulled CM#1's arm downward, and CM#1 lost his footing (red arrow):



CM#1 fell, striking his head against the ground, and an audible "thud" was captured:



WO#1's BWV captured the takedown. With both hands, NE#1 grabbed CM#1's left arm and guided it downward, causing CM#1 to fall:



NE#1 said, "Now, you're going to jail. You wanna hit me? That's fine." NE#1 handcuffed CM#1, who was nonresponsive. NE#1 told WO#1, "Sorry. He hit me three times. I'm not going to allow it anymore." WO#1 replied, "He's bleeding." CM#1 bled from his head. After about 30 seconds, CM#1 started moaning. NE#1 rolled CM#1 to his side. CM#1 moved, but NE#1 directed CM#1 to stay down while awaiting the Seattle Fire Department (SFD).

NE#1 told responding SFD employees, "So, he's alert and conscious now. Uh, it was a hard takedown. He hit [...] the left side of his face. He's extremely intoxicated." CM#1 spat at an SFD employee during treatment before being transported to a hospital.

C. Police Reports

NE#1's police report was consistent with BWV observations. NE#1 documented the following:



[CM#1] refocused on me and began to yell at me and interfere with me getting to my patrol car and leaving the scene. [CM#1] placed himself between me and my car and pushed in [...] closer and closer to me. While yelling at me, [CM#1] stepped in closer to me, pushed one hand into my chest, and grabbed my left wrist. Based on [CM#1's] increased hostility and aggressive nature, I believed I was in danger of immediate Assault. In defense of Assault, I placed [CM#1] on the ground and took him into custody for Assault.

D. FIT Interview

On February 4, 2024, FIT interviewed NE#1, who described his use of force as follows:

Uh, I think I made it to about 15 feet to the front passenger corner of my patrol car, uh, when [CM#1] pushed into me with his hand, and then when I went to move his hand, he grabbed my left wrist, at which point it was no longer him just trying to get away. He was actively trying to engage with me. And in defense of assault, I reached around, grabbed him by his sweatshirt, and did a takedown, uh, to the ground.

NE#1 clarified that he executed a “dragging takedown to the ground, uh, while holding him the entire way down,” which he described as a department “trained takedown.”

E. OPA Interview

On July 1, 2024, OPA interviewed NE#1, whose statements were consistent with the abovementioned evidence. NE#1 said he directed WO#1 and WO#2 to leave because CM#1 refused to leave them alone. NE#1 said he applied minimal pressure during the takedown, but CM#1 quickly fell, likely due to his intoxication. OPA asked NE#1 why he did not ask backing officers to execute a team takedown. NE#1 said he did not want other officers to re-engage CM#1, especially since CM#1 appeared fixated on one officer after NE#1 spent considerable time trying to de-escalate and disengage from CM#1. NE#1 believed his trained takedown was appropriate.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

8.100 – De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force (Effective April 24, 2023)

It was alleged that NE#1 failed to de-escalate.

When safe, feasible, and without compromising law enforcement priorities, officers will use de-escalation tactics to reduce the need for force. SPD Interim Policy 8.100-POL-1 (effective April 24, 2023). Officers are encouraged to use team approaches to consider whether any officer has successfully established a rapport with the subject. *Id.* The totality of the circumstances should guide de-escalation options. *Id.* SPD policy emphasizes communication, time, distance, and shielding to minimize the need for force. *Id.*



Throughout NE#1's interaction with CM#1, NE#1 utilized communication, time, and distance. Shielding was infeasible since CM#1 accosted NE#1 in an open street. NE#1 communicated with CM#1, repeatedly telling him he could leave. NE#1 also repeatedly warned CM#1 to back off when CM#1 encroached on NE#1's personal space. NE#1 spent about five minutes (after CM#1 was uncuffed and before NE#1 executed a takedown) trying to disengage from CM#1. During that time, CM#1 refused to comply or leave. NE#1 utilized distance by extending his arm towards CM#1 and attempting to leave despite CM#1's interference. Believing that CM#1 was fixated on WO#2, NE#1 tried to separate CM#1 from WO#2 by directing WO#2 to leave. Overall, NE#1 appropriately de-escalated by effectively utilizing communication, time, and distance.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 – Allegation #2

8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)

It was alleged that NE#1 used unauthorized force.

Officers will only use objectively reasonable, necessary, and proportional force to the threat or urgency of the situation to achieve a law enforcement objective while protecting the life and safety of all persons. SPD Interim Policy 8.200(1) (effective April 24, 2023). Reasonability must consider that officers are often forced to make split-second decisions about the force necessary in a particular situation in tense, uncertain, dynamic, and rapidly evolving circumstances. *Id.* The question is whether the officers' actions were objectively reasonable considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* Several factors should be weighed when evaluating reasonableness. *See id.* Force is necessary under the totality of the circumstances when there is no reasonably effective alternative to using physical or deadly force, and the type and amount of physical or deadly force used is a reasonable and proportional response to effect the legal purpose intended or to protect against the threat posed to the officer or others. SPD Interim Policy 8.050 (effective May 19, 2023). A proportional use of force must reflect the totality of circumstances surrounding the situation, including the nature and immediacy of any threats posed to officers and others. *Id.* Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to apply. *Id.*

NE#1 used authorized force under the circumstances. First, NE#1's use of force was objectively reasonable after CM#1 grabbed NE#1's wrist. Before NE#1's use of force, NE#1 frequently extended his arm to keep CM#1 away, but CM#1 continuously encroached on NE#1's personal space and was repeatedly warned to back off. However, CM#1 was noncompliant and belligerent. As articulated in Named Employee #1 – Allegation #1, NE#1 attempted to de-escalate the situation and depart. Despite being told several times he was free to leave, CM#1 physically prevented the officers, including NE#1, from disengaging. Second, NE#1's use of force was necessary. NE#1 articulated that he executed a takedown "in defense of assault." CM#1 repeatedly brushed away NE#1's extended arm to create distance between CM#1 and NE#1. Once CM#1 grabbed NE#1's wrist, NE#1 was permitted to use force to protect himself against further assaults. Third, NE#1's use of force was proportional. NE#1's takedown was a trained tactic to guide CM#1 to the ground.

CM#1's immediate fall was an unintended consequence of NE#1's takedown. CM#1's intoxication and unsteady balance likely contributed to his fall and subsequent head injury. CM#1 was so intoxicated that he slurred his speech



and used WO#2's patrol car for support. At the same time, he was handcuffed and, after being uncuffed, had unsteady balance throughout his interaction with the officers. NE#1 knew the extent to which CM#1 was intoxicated and, therefore, should have considered CM#1's intoxicated state before executing a trained takedown on a concrete pavement. A takedown may have posed an unreasonable risk of injury to CM#1, given CM#1's unsteadiness. WO#1 was nearby, so a team takedown was also feasible. While OPA appreciates that NE#1 did not want WO#1 or WO#2 to re-engage CM#1 due to CM#1's fixation on them, a team takedown would have mitigated the risk of injury to CM#1. Therefore, a training referral is warranted under the circumstances.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with him, including the importance of considering circumstantial (like the subject's intoxication) and environmental (like hard surfaces) hazards before using force. The chain should also provide any retraining and counseling it deems necessary. Any retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**